

The examiner then states that "he will consider -on- to imply the limitation of proximity. This is the most far fetched limitation that can be read into applicant's claims. The applicant has also consulted the "Random House College Dictionary" where the word -on- in combination with the word "proximity" is being interpreted in proximity as a house on the lake. However, applicant has amended claim 5 to recite that the play devices are on and in contact with the platform. This should leave no doubt as to where exactly the play devices are located. The examiner now states that "it would have been obvious to take the canopy of Jensen and install it on the columns and replace the roof panels of Briggs so that children would have been protected from the weather." The examiner has read applicant's specification to suggest this modification. What the examiner is suggesting does not flow from Jensen or Briggs. Even if the modification can be accomplished, the children in their play devices would not be under a weather protection at all because the play devices of Briggs are outside of the canopy 32 and would not be on the platform 67. Therefore, this rejection cannot be maintained, especially in view of the modified claim language.

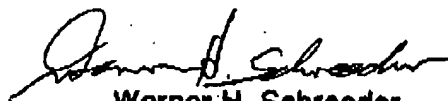
Claims 6 - 10, 12, 13, 15, 16, 22, 23, 25, 27, 32, 33, 36, 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen in view of Briggs as applied to claim 5 above, and further in view of Clayton. In the prior paragraph it has been established that claim 5, as amended, cannot be rejected anymore as unpatentable over Jensen in view of Briggs. Therefore, the introduction of a new reference to Clayton cannot be used to reject the claims depending from claim 5. It should also be pointed out to the examiner that the Board of Appeals, The old CCPA, and the now CAFC frown on using two references to reject claims and then use a third reference to modify the previous modification. This is considered to be a hindsight rejection because to proposed rejection is not taught by the references. The examiner has given call out of A' - C' to the bracket.

Applicant claims B1 of Clayton to be a vertical support member, while in Clayton it is slanted. Therefore, C' should also be vertical. B' then is angled to a vertical rod C'. What is shown by Clayton is a different angulation from what is claimed.

16. and 17. Claims 11, 14, 17 - 20, 24, 26, 28 - 31, 34, 35, 37, 39, 41, 42 and 47 - 50 are rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claim 4 of applicant's prior patent in view of Briggs.

In response to this rejection the applicant is at a total loss how to treat and answer this rejection. All the cited claims above are depending claims. Depending claims cannot be rejected because they also include the subject matter of the claims from which they depend. The independent claims from which these claims depend have not been rejected under the cited doctrine. Dependent claims cannot stand on their own and cannot be rejected on their own.

In view of all of the above, it is believed that all objections and rejections have been dealt with and the examiner is respectfully requested to pass this application to an early indication of allowability.


Werner H. Schroeder

Reg. No., 36,387

Date: 11/28/05